IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

RSA.No. 428 of 2007()

(AGAINST THE JUDGMENT AND DECREE OF THE DISTRICT COURT, ERNAKULAM IN AS.182/2006 DATED 05/10/2006 PREFERRED AGAINST THE DECISION OF THE MUNSIFF'S COURT, MUVATTUPUZHA IN O.S.NO.260 OF 1998 DATED 4/10/2000)

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APPELLANTS IN R.S.A.-APPELLANTS IN A.S:
.DEFENDANTS 1 TO 21 IN SUIT

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1. **MATHEW,W/O.ABRAHAM,KONDOOR HOUSE, KIZHAKOMBU KARA,KOOTHATTUKULAM VILLAGE.**
2. **THAMBY,S/O.PHILIP,MYLAMKADAVIL, IN DO.DO**
3. **BIJU,S/O.MATHAI,KONDOOR HOUSE, IN DO.DO.**
4. **SHABU,S/O.THAMBI,MYLAMKADAVIL, IN DO.DO.**
5. **SUNIL,S/O.GOPI,PUTHUVAL HOUSE, IN DO.DO.**
6. **SKARIAH,NIRAPPIL HOUSE,KIZHAKOMBU IN DO**
7. **SAJI,S/O.GEORGE,NIRAPPIL HOUSE, IN DO...DO...**
8. **CHACKOCHAN,S/O.KURIVILA, MUKALANKUNNEL HOUSE, IN DO DO**
9. **THOMAS S/O.KURUVILA, IN DO.DO.**
10. **MADHAVAN,S/O.ITTAN PUTHENPURCKAL HOUSE,IN DO.DO.**
11. **GOPI, S/O.KANDAPILLA, PUTHENPURACKAL HOUSE, IN DO.DO.**

..2/-

12. REMANAN, CHEMBISSERIL HOUSE, IN DO..DO

13. GIRIJA,W/O.REMANAN, IN DO.DO,

14. HARI,S/O.KUTTAPPN,
POTHUMKUZHIYIL HOUSE,IN DO.DO.

15. AJI,S/O.DO IN DO.DO.

16. MOHANAN,MYLAMKADAVIL HOUSE, IN DO..DO.

17. BIJU,S/O.THANKAPPAN,PAMBAZHAKKUNNEL
HOUSE IN DO.DO.

18. KUNJUKUNJU,CHEMBISSERIL HOUSE,IN DO..DO

19. DEVAKI,W/O.KUNJUKUNJU, IN DO.DO.

20. BINU,S/O.MOHANAN, IN DO.DO.

21. AMMINNI,W/O.MOHANAN IN DO.DO

BY ADV. SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS IN R.S.A.-RESPONDENTS IN AS.
PLAINTIFFS & DEFENDANT NO.22 IN SUIT:
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1. C.M.AVIRACHAN,S/O.MATHAI,
CHELAKKAMATTATHIL HOUSE,KIZHAKOMBU KARA,
KOOTHATTUKULAM VILLAGE.

2. OMANA,W/O.AVIRACHAN, IN DO.DO.

3. SECRETARY,KOOTHATTUKULAM GRAMA
PANCHAYAT,KOOTHATTUKULAM.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A NO. 428 OF 2007

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Dated this the 10th day of July,2007

JUDGMENT

Defendants in O.S.260/1998 on the file of Munsiff Court, Moovattupuzha are the appellants. Plaintiffs are the respondents 1 and 2. Respondents the husband and wife instituted the suit seeking a decree for declaration of their right and title to the plaint schedule property and for a permanent prohibitory injunction and for damages caused by respondents by cutting trees and forming a road in the plaint schedule property. The case of respondents was that plaint schedule property comprised in survey No.745/1A having an extent of 1 acre 35.18 cents belongs to respondents 1 and 2 as per Ext.A1 sale deed and it is in their possession and on the southern and western side of the property there is a road and there was an iruva kayyala on the south and road was widened making use of a portion of the property

surrendered by respondents and appellants intended to further widen the road and on 20.5.1998 appellants 1 to 3 being members of the Road Construction Committee approached first respondent requesting to give three metre wide portion of the property in addition to the portion originally surrendered and respondents 1 and 2 did not agree for the same. It was alleged that taking advantage of the absence of first respondent from the house as he had had gone away, appellants trespassed into the property and cut down coconut trees, rubber treees and arecanut trees and destroyed the barbed wire fencing at a distance of 60 metres and the southern iruva kayyala and thereby caused a loss of Rs.87,300/-. Contending that appellants have no right to do so, respondents sought a decree for permanent prohibitory injunction after declaring their title and for damages. Appellants in the written statement contended that there was a road through the western and southern side of the plaint schedule property

which was having a width of 8 metres and it is a public road starting from Karingamattom-Vettickaparamputhazham and was constructed through the property surrendered by neighbouring owners and the maintenance of the road was being done by third respondent panchayat and the case of respondents that it was having only four metres width is not correct. According to appellants it was utilising the funds of the Panchayat Committee, maintenance of the road was carried on and they did not commit any trespass and they only requested to surrender the property. It was also contended that respondents 1 and 2 surrendered a portion of the road through which the road was widened and they did not commit any damage or cut trees and therefore respondents are not entitled to the decree sought for.

2. Learned Munsiff appointed a Commission and the Commissioner submitted Exts.C1 to C4 reports and plan. On the evidence of Pws. 1 to 5, DW1 and Exts.A1 to A12 and B1 to B14, learned Munsiff found

that the road was originally having only four metres width and was not having a width of 8 metres as canvassed by the appellants. Learned Munsiff also found that though appellants contended that there was a surrender of the property evidenced by Ext.B14(a) original surrender deed, it was different from Ext.B1 photocopy which was originally produced by them while hearing the injunction application and on the evidence held that no reliance could be placed on Ext.B14 (a) surrender. Learned Munsiff on the evidence further found that plaint schedule property is in Ward No.8 and B1 to B3 documents evidencing the expenditure met by the Panchayat for repairing the road is in respect of the road passing through ward No.5 and therefore they do not support the case advanced by the appellants. Learned Munsiff also held that when the property belong to both respondents Ext.B14(a) is only by first respondent and the property was not surrendered but the appellants committed damages and therefore granted a decree

for injunction. On the evidence learned Munsiff further found that respondents 1 and 2 sustained a total damages of Rs.81,200. A decree for realisation of the same as damages was also granted. Appellants challenged the decree and judgment before District Court in A.S.182/2006. Learned District Judge on reappreciation of evidence confirmed the findings of the leanred Munsiff and dismissed the appeal. It is challenged in this appeal.

3. Learned Senior counsel appearing for appellants was heard.

4. The argument of the learned Senior counsel was that admission in the plaint and that of the first appellant when examined as PW1, were not properly considered by the courts below and the admissions establish that the respondents had surrendered the disputed portion of the property for widening of the road and that portion of the property is the disputed plot No.2 marked in Ext.C4(a) plan and not plot No.1 which is marked

by the Commissioner in Ext.C4(a) plan. It was also argued that as the road was not shown as the boundary on the west and south in Ext.A1, the title deed and the existence of road was admitted it is to be taken that the road was formed even earlier and therefore the surrender of land admitted by respondents could only be in addition to the existing portion of the road and if so the plot surrendered could only be plot No.2 as demarcated by the Commissioner in Ext.C4 (a) plan and therefore the courts below should not have granted the decree as sought for. It was further argued that if the road is having a width of 4 metres, as admitted by respondents, considering the length as noted by the Commissioner, the total extent which should have been surrendered by the respondents should be 13 cents and as per Ext.C4(a) plan, the extent of the green shaded portion which is shown as the plot originally surrendered only 8 cents and therefore the red shaded portion should also have been surrendered and in such circumstance,

findings of the courts below is not sustainable.

5. On hearing the learned senior counsel, I do not find any substantial question of law involved in the appeal. What was argued was that the concurrent findings of facts by the courts below are not correct. What was contended by the appellants before the trial court was that there was an actual surrender of the disputed plot by the respondents, which was already converted into a public road before filing of the suit and therefore respondents are not entitled to the decree for declaration of the title or decree for damages allegedly committed by them in respect of that portion of the property which was widened earlier especially when the expenses were met by the Panchayat. It was argued that the factum of surrender the property covered under Ext.B14(a) should have been accepted. Ext.B14(a) is purported to be executed by only first respondent. Even if it was a valid surrender, it will not effect the rights of second respondent. Courts below found

that Ext.B1 produced by the appellants to support their case of surrender earlier which is purported to be the photocopy of Ext.B14(a) is different and the extent was added later. On the evidence courts below found that Ext.B14(a) cannot be accepted and there was no surrender as canvassed by the appellants. Moreover, when no surrender was made by second respondent and she was not even a party to Ext.B14(a) surrender courts below rightly found that there was no valid surrender.

6. Learned Munsiff after elaborately considering the evidence entered a factual finding that there was no surrender of plot No.2 marked in Ext.C4(a) plan and appellants committed trespass and cut down coconut, rubber and areca trees and committed damages. First appellate court on reappreciation of evidence confirmed the same. So also on the evidence both the courts found that it was appellants who illegally cut down the trees and the iruva kayyala and committed damages to the tune of Rs.81,200/-. These factual findings cannot be

interfered by reappreciating the evidence in exercise of the powers of this court under section 100 of the Code of Civil Procedure. As no substantial question of law is involved in this appeal, appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006